

1 WILLIAM F. SULLIVAN (SB# 78353)
2 *williamsullivan@paulhastings.com*
3 JOSHUA G. HAMILTON (SB# 199610)
4 *joshuahamilton@paulhastings.com*
5 PETER Y. CHO (SB# 255181)
6 *petercho@paulhastings.com*
7 PAUL, HASTINGS, JANOFSKY & WALKER LLP
8 515 South Flower Street
9 Twenty-Fifth Floor
10 Los Angeles, CA 90071-2228
11 Telephone: (213) 683-6000
12 Facsimile: (213) 627-0705

13 Attorneys for Defendants
14 *Ranjit Kripalani and Jennifer S. Sandefur*

15
16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA

18 MAINE STATE RETIREMENT
19 SYSTEM, Individually and On Behalf
20 of All Others Similarly Situated,

21 Plaintiff,

22 vs.

23 COUNTRYWIDE FINANCIAL
24 CORPORATION, et al.,

25 Defendants.

26 CASE NO. 2:10-CV-00302 MRP (MANx)

27 **RANJIT KRIPALANI AND
28 JENNIFER S. SANDEFUR'S
REQUEST FOR ENTRY OF ORDER
OF DISMISSAL WITH PREJUDICE**

Courtroom: 12
Judge: Hon. Mariana R. Pfaelzer

1 **I. PROCEDURAL HISTORY SUPPORTING DISMISSAL**

2 Ranjit Kripalani and Jennifer S. Sandefur hereby request that the Court enter
3 an order dismissing them from the instant action with prejudice as they are no
4 longer parties to this case. *See Hal Roach Studios v. Richard Feiner & Co.*, 896
5 F.2d 1542, 1546 (9th Cir. 1990). Mr. Kripalani and Ms. Sandefur, therefore,
6 submit this request in lieu of submitting a supplemental brief pursuant to the
7 Court's recent order.

8 On August 16, 2010, Mr. Kripalani and Ms. Sandefur filed a motion to
9 dismiss (Docket No. 152) Plaintiffs' Amended Consolidated Class Action
10 Complaint ("Amended Complaint").¹ On November 4, 2010, the Court dismissed
11 this action and granted Plaintiffs leave to amend their pleading (the "Order").
12 (Docket No. 222.) In its Order, the Court specifically instructed Plaintiffs, in
13 amending their deficient Amended Complaint, to, *inter alia*, "eliminate those
14 individual defendants and claims for which the statute of limitations has expired."
15 (Order at 4.) The Court noted that "some individual defendants have made a
16 persuasive case for why they should be eliminated from the lawsuit even if
17 *American Pipe* [tolling] applies." (Id. at 12.) Thereafter, on December 6, 2010,
18 Plaintiffs filed their Second Amended Class Action Complaint ("Second Amended
19 Complaint"), but did not name Mr. Kripalani and Ms. Sandefur as defendants.
20 (Docket No. 227.) Under well-settled law, Plaintiffs' decision to drop Mr.
21 Kripalani and Ms. Sandefur as defendants in the Second Amended Complaint
22 requires their dismissal with prejudice.

23 **II. MR. KRIPALANI AND MS. SANDEFUR SHOULD BE DISMISSED.**

24 It is axiomatic that an amended complaint supersedes the previous complaint.
25 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992) (citing *Hal Roach Studios*,

26

¹ Mr. Kripalani and Ms. Sandefur also joined the Motion to Dismiss filed by
27 Countrywide Financial Corp., Countrywide Home Loans, Inc., CWALT, Inc.,
28 CWMBS, Inc., CWABS, Inc., CWHEQ, Inc., Countrywide Capital Markets,
Countrywide Securities Corporation, and N. Joshua Adler. (Docket No. 158.)

1 *Inc.*, 896 F.2d at 1546). As a consequence, defendants named in an original
2 complaint who are not named in an amended complaint are dismissed. *See Hal*
3 *Roach Studios, Inc.*, 896 F.2d at 1546.

4 Here, Plaintiffs initially named Mr. Kripalani and Ms. Sandefur as
5 defendants in their Amended Complaint, which the Court dismissed through its
6 Order. In its Order, following Defendants' motions to dismiss, the Court
7 specifically instructed Plaintiffs to "eliminate those individual defendants and
8 claims for which the statute of limitations has expired." (Order at 4.) Following
9 the Court's specific directive, Plaintiffs dropped Mr. Kripalani and Ms. Sandefur as
10 defendants by not naming them in the Second Amended Complaint. Accordingly,
11 Mr. Kripalani and Ms. Sandefur are dismissed from this case.

12 **III. DISMISSAL SHOULD BE WITH PREJUDICE.**

13 Because Plaintiffs would never be able to cure by amendment their flawed
14 allegations against Mr. Kripalani and Ms. Sandefur, dismissal with prejudice is
15 appropriate. *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (dismissing with
16 prejudice is appropriate where plaintiff cannot cure by amendment). In their
17 Motion to Dismiss Plaintiffs' Amended Complaint, Mr. Kripalani and Ms. Sandefur
18 provided a step-by-step analysis clearly demonstrating that Plaintiffs' allegations
19 against them were absolutely time-barred even if tolling applied. In dismissing
20 Plaintiffs' Amended Complaint based on threshold issues concerning standing and
21 the statute of limitations, the Court noted that "the one-year limitations period
22 clearly appears to have expired for all the Offerings . . ." (Order at 8.) With
23 respect to allegations against Mr. Kripalani and Ms. Sandefur, Plaintiffs could
24 never cure the statute of limitations violation by amendment, a point underscored
25 by Plaintiffs' decision to drop Mr. Kripalani and Ms. Sandefur as defendants in the
26 Second Amended Complaint. Accordingly, dismissal with prejudice is appropriate
27 in this case.

28

IV. CONCLUSION

For the foregoing reasons, Mr. Kripalani and Ms. Sandefur respectfully request that the Court enter an order of dismissal with prejudice.

Dated: January 14, 2011

PAUL, HASTINGS, JANOFSKY & WALKER LLP
WILLIAM F. SULLIVAN
JOSHUA G. HAMILTON
PETER Y. CHO

By: /s/ Joshua G. Hamilton

JOSHUA G. HAMILTON

Attorneys for Defendants

Ranjit Kripalani and Jennifer S. Sandefur